IN THE SUPREME COURT OF THE STATE OF WASHINGTON

washington state major league baseball stadium public facilities district, a special purpose district of the state of Washington, and THE BASEBALL CLUB OF SEATTLE, LP, a Washington limited partnership, Appellants, v. HUBER, HUNT & NICHOLS-KIEWIT CONSTRUCTION COMPANY, a Washington joint venture; HUNT CONSTRUCTION GROUP, INC., a foreign corporation; and KIEWIT CONSTRUCTION COMPANY, a foreign corporation, Respondents/Cross Appellants.	NO. 81029-0 EN BANC Filed March 5, 2009

STEPHENS, J.—The Washington State Major League Baseball Stadium Public Facilities District (PFD) and the Baseball Club of Seattle, LP (Mariners) appeal an order granting summary judgment in favor of Huber, Hunt & Nichols-Kiewit Construction (HK) on their construction defect claims. The appellants contend their action is "for the benefit of the state" and thus exempt from the six

year contract statute of limitations under RCW 4.16.160. Br. of Appellants at 19. HK filed a conditional cross-appeal against subcontractors Long Painting, Inc., and Herrick Steel, Inc., contending that if the summary judgment order dismissing the claims of the PFD and the Mariners is reversed, reversal of the order dismissing HK's third party claims against Long Painting and Herrick Steel is warranted. Long Painting in response argues that HK's appeal regarding the dismissal of HK's third party claims is frivolous and asks for attorney fees under RAP 18.9. We reverse and remand for further proceedings.

FACTS

The PFD, a Washington municipal corporation, developed and owns Safeco Field, home field of Major League Baseball's Seattle Mariners. The Mariners perform maintenance and repair of Safeco Field. By agreement, the PFD must reimburse the Mariners for "Unanticipated Capital Costs" incurred in making repairs to the facility. Clerk's Papers (CP) at 201.

HK is a joint venture composed of two of the nation's largest construction companies, Hunt Construction Group and Kiewit Construction Company. On May 6, 1996, the PFD executed a contract (Construction Agreement) with HK, defining terms and obligations in connection with the construction of Safeco Field.

Section 07252 of the Construction Agreement required HK to apply an intumescent fire protection coating system to Safeco Field's exposed structural steel beams and columns. The coating system specifications required HK to engage in a

three-layer application process: (1) apply a primer to the raw steel at the place of fabrication, (2) spray the intumescent product on the beam or column, and (3) paint the beam or column.

General contractor HK hired subcontractors Long Painting and Herrick Steel to participate in parts of the application process. Herrick Steel was hired for surface preparation, prime painting, and installation of steel components. Long Painting was hired for application of the intumescent coating on the steel structural members. HK achieved substantial completion of the Construction Agreement on July 1, 1999.

In 2005, the Mariners discovered a catastrophic failure in the intumescent coating system. Following an extensive investigation, the Mariners concluded that the system had failed between the primer layer and intumescent coating layer and the failure resulted from HK's use of an improper primer that was incompatible with the overlain intumescent coating product. As a result of HK's error rather than normal wear and tear or exhaustion of useful life, the intumescent product separated from the beam or column.

The coating failure appeared first as visible blisters. The Mariners attempted to repair these blisters, but removal of a blister routinely caused the intumescent product to fall off the entire column or beam. The Mariners advanced more than $2.46 million to pay for the first phase of repairs, which covered approximately 29,600 square feet of structural steel beams and columns. Additional repair costs have accumulated since the first phase of repairs.

On August 14, 2006, the PFD and the Mariners sued HK, seven years after substantial completion of the Construction Agreement by HK. The PFD and the Mariners alleged that HK breached the Construction Agreement by failing to execute the construction at Safeco Field in accordance with the contract specifications and sought to recover all costs and expenses associated with repairs of the defective work.

On October 13, 2006, HK filed its answer, and among many defenses, HK alleged that the claims of the PFD and Mariners were "time barred by the Statute of Limitations." CP at 9, 12. HK also asserted third party claims against subcontractors Long Painting and Herrick Steel. On February 23, 2007, HK brought a motion for summary judgment as to all claims asserted by the PFD and the Mariners contending that the PFD and the Mariners failed to file their complaint within the six year statute of limitations for breach of contract claims.

On March 23, 2007, the trial court entered an order granting HK's motion for summary judgment against the PFD and the Mariners, also dismissing the third party claims by HK against Long Painting and Herrick Steel.

On April 9, 2007, the PFD and the Mariners appealed the summary judgment order to Division One of the Washington State Court of Appeals. On April 19, 2007, HK cross-appealed to the Court of Appeals the dismissal of HK's third party claims in the event that the Court of Appeals reversed the trial court's summary judgment order. In response, Long Painting in its briefing asked for attorney fees

against HK for filing a frivolous appeal. Both appeals were transferred pursuant to RAP 4.4 from Division One of the Court of Appeals to this court.

ANALYSIS

First, we address whether summary judgment is appropriate for the claims by the PFD and the Mariners against HK. Second, we examine the third party claims of HK against Long Painting and Herrick Steel.

On review of a summary judgment order, we engage in the same inquiry as the trial court. *Korslund v. DynCorp Tri-Cities Servs., Inc.*, 156 Wn.2d 168, 177, 125 P.3d 119 (2005). All facts and reasonable inferences are considered in a light most favorable to the nonmoving party, while all questions of law are reviewed de novo. *Berger v. Sonneland*, 144 Wn.2d 91, 102-03, 26 P.3d 257 (2001). Summary judgment is appropriate only when there are no disputed issues of material fact and the prevailing party is entitled to judgment as a matter of law. CR 56(c).

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HK contends that the claims of the PFD and Mariners accrued no later than July 1, 1999, the date of substantial completion. CP at 174-76. The applicable limitations period for contract claims is six years. RCW 4.16.040. Thus, HK contends that summary judgment was proper because the PFD and Mariners filed their complaint on August 14, 2006, more than seven years after substantial completion. CP at 1-8.

The PFD and Mariners respond that summary judgment was improper

because their breach of contract action was brought "'for the benefit of the state'" and is thus exempt from the six year statute of limitations on contract actions. Br. of Appellants at 19. They rely on RCW 4.16.160, which states:

> The limitations prescribed in this chapter shall apply to actions brought in the name or for the benefit of any county or other municipality or quasimunicipality of the state, in the same manner as to actions brought by private parties: PROVIDED, That, except as provided in RCW 4.16.310,[1] there shall be no limitation to actions brought in the name or for the benefit of the state, and no claim of right predicated upon the lapse of time shall ever be asserted against the state: AND FURTHER PROVIDED, That no previously existing statute of limitations shall be interposed as a defense to any action brought in the name or for the benefit of the state, although such statute may have run and become fully operative as a defense prior to February 27, 1903, nor shall any cause of action against the state be predicated upon such a statute.

This provision reflects a facet of sovereign immunity under the old English common law doctrine, "*nullum tempus occurrit regi*," meaning "no time runs against the king." Sigmund D. Schutz, *Time to Reconsider* Nullum Tempus Occurrit Regi—*The Applicability of Statutes of Limitations Against the State of Maine in Civil Actions*, 55 Me. L. Rev. 373, 374 (2003).

This court in *Washington Public Power Supply System v. General Electric Co.*, 113 Wn.2d 288, 295, 778 P.2d 1047 (1989) (*WPPSS*) determined that when a municipality brings an action that arises out of the exercise of powers traceable to the State's sovereign powers delegated to the municipality, the municipality as an agent of the State is bringing the action "for the benefit of the state" within the meaning of RCW 4.16.160. RCW 4.16.160 exempts a municipality from a statute

[1] No party asserts that this provision is applicable.

of limitation in this circumstance. *WPPSS*, 133 Wn.2d at 295.

The "for the benefit of the state" language in RCW 4.16.160 is properly understood to refer to the *character or nature* of municipal conduct rather than its effect. *WPPSS*, 133 Wn.2d at 293. The only inquiry is whether the municipal action arises from an exercise of powers traceable to delegated sovereign state powers or whether such action is proprietary and thus subject to the statute of limitation. *Id.* at 296. Each case is determined in light of the particular facts involved. *Id.*

In determining whether an action is sovereign or proprietary, we may look to constitutional or statutory provisions indicating the sovereign nature of the power and may also consider traditional notions of powers that are inherent in the sovereign. *Id.* Relevant to this analysis are the general powers and duties under which the municipality acted, the purpose of those powers, and whether the activity or its purpose is normally associated with private or sovereign acts. *Id.* The distribution of benefits is irrelevant. *Id.*

The principal test for determining whether a municipal act involves a sovereign or proprietary function is whether the act is for the common good or whether it is for the specific benefit or profit of the corporate entity. *Okeson v. City of Seattle*, 150 Wn.2d 540, 550, 78 P.3d 1279 (2003); *Hagerman v. City of Seattle*, 189 Wash. 694, 701, 66 P.2d 1152 (1937). McQuillin's treatise explains the difference between sovereign and proprietary functions:

> The purposes of municipal corporations, using the term in its strict meaning, are twofold: the one to assist in the government of the state as an agent of the state, often referred to as an arm of the state, and to promote the public welfare generally; the other to regulate and to administer the local and internal affairs of the territory which is incorporated, for the special benefit and advantage of the urban community embracing within the corporation boundaries. These two functions are usually referred to as the dual powers of municipal corporations.

1 Eugene McQuillin, The Law of Municipal Corporations § 2.09, at 158 (3d ed. 1999) (footnote omitted).

In *WPPSS*, this court held that the state electrical supply system was not acting "for the benefit of the state" within the meaning of RCW 4.16.160 because there was "no indication in the Washington Constitution or in the statutes that the development, production, or sale of electric power to the citizens of Washington is a sovereign duty of the State." *WPPSS,* 113 Wn.2d at 300-01. To the contrary, the production of electricity had not traditionally been considered a sovereign duty, but rather was considered a proprietary municipal function. *Id.* at 301. This court stated:

> There is one statutory provision which authorizes cities of the first class, PUD's, and joint operating agencies to participate together in the development of nuclear and other thermal facilities to achieve "economies of scale and thereby promot[e] the economic development of the state and its natural resources to meet the future power needs of the state and all its inhabitants." RCW 54.44.010. The Legislature declared this to be "in the public interest and for a public purpose." RCW 54.44.010. However, enabling this type of participation to achieve economies of scale, while in the public interest, does not transform the production of electric energy into a sovereign duty.

Id. at 300 (alteration in original).

We have never before considered whether a municipality's actions in constructing a professional sports stadium involve a sovereign or proprietary function. The PFD and the Mariners contend that *CLEAN v. State,* 130 Wn.2d 782, 928 P.2d 1054 (1996), supports their argument insofar as *CLEAN* recognized that the construction of Safeco Field was a proper exercise of the State's police power, which is necessarily a sovereign power. We do not read *CLEAN* so expansively. While we there addressed the public purpose involved in the stadium construction, no determination in *CLEAN* was made as to whether the PFD's construction of Safeco Field was an act in the sovereign capacity "for the benefit of the state" under RCW 4.16.160. *CLEAN*, 130 Wn.2d at 786.

The mere fact that a government project serves a public purpose or grants an economic benefit does not elevate it to the level of a sovereign act. *See WPPSS*, 113 Wn.2d at 300. Public health and safety are not the basis for distinguishing between governmental and proprietary functions of a municipality. *See City of Moses Lake v. United States*, 430 F. Supp. 2d 1164, 1177-78 (E.D. Wash. 2006) (holding that the operation of a municipal water system is a proprietary activity and that Moses Lake was not entitled to invoke RCW 4.16.160 to salvage otherwise untimely tort claims); *cf. Okeson*, 150 Wn.2d at 550-51 (holding that a municipality's operation of street lights and traffic signals involves a sovereign function).

We have found an action to be "for the benefit of the state" under RCW

4.16.160 where it involves a duty and power inherent in the notion of sovereignty or embodied in the state constitution. *WPPSS*, 113 Wn.2d at 296. For example, in *Bellevue School District No. 405 v. Brazier Construction Co.*, 103 Wn.2d 111, 115-16, 691 P.2d 178 (1984), we held that a school district could bring tort claims for design and construction defects 20 years after completion because in building schools the district was acting in its sovereign capacity.

Similarly, we have held that actions arising out of the sovereign power of taxation are not subject to the bar of a statute of limitations. *Gustaveson v. Dwyer*, 83 Wash. 303, 309-10, 145 P. 458 (1915); *Commercial Waterway Dist. No. 1 v. King County*, 10 Wn.2d 474, 479-80, 117 P.2d 189 (1941); *City of Tacoma v. Hyster Co.*, 93 Wn.2d 815, 821, 613 P.2d 784 (1980); *Allis-Chalmers Corp. v. City of North Bonneville*, 113 Wn.2d 108, 112, 775 P.2d 953 (1989). This court in *Gustaveson* stated:

> It is apparent from the doctrine of these authorities that a general statute of limitations has no application, whether the tax sought to be collected is to become the property of the state and payable directly into the state treasury, or whether it is to become the property of the particular county or municipality and payable into the municipal treasury to be expended for municipal purposes. In either case the tax has been imposed and collected for the express purpose of carrying on the functions of government. . . . All of the rights of the county here involved are traceable to and rest in the sovereign power of taxation.

Gustaveson, 83 Wash. at 309-10.

In *Louisiana-Pacific Corp. v. ASARCO Inc.*, the Ninth Circuit Court of Appeals applying Washington State law held that the port of Tacoma acted in a

sovereign capacity when it leased port log yards because the state constitution provides that areas designated by the port commission up to 2,000 feet from the harbor line "'shall be reserved for landings, wharves, streets, and *other conveniences of navigation and commerce*.'" 24 F.3d 1565, 1582 (1994) (quoting Wash. Const. art. XV, § 1). Thus, the port of Tacoma could bring tort claims after expiration of the limitation period, pursuant to RCW 4.16.160. *Id.*

This court has held in sovereign immunity cases that a municipal corporation's improvements, construction, or maintenance of public parks, swimming pools, or merry-go-rounds for public recreation involve sovereign governmental functions. *Russell v. City of Tacoma*, 8 Wash. 156, 159, 35 P. 605 (1894); *State v. Metro. Park Dist. of Tacoma*, 100 Wash. 449, 452, 171 P. 254 (1918); *Nelson v. City of Spokane*, 104 Wash. 219, 220, 176 P. 149 (1918); *Stuver v. City of Auburn*, 171 Wash. 76, 82, 17 P.2d 614 (1932); *Mola v. Metro. Park Dist. of Tacoma*, 181 Wash. 177, 182, 42 P.2d 435 (1935); *Kilbourn v. City of Seattle*, 43 Wn.2d 373, 380, 385, 261 P.2d 407 (1953); *Port of Seattle v. Int'l Longshoremen's & Warehouseman's Union,* 52 Wn.2d 317, 322, 324 P.2d 1099 (1958). This accords with the view of other states that the construction and maintenance of facilities for public recreation are sovereign functions. *Packard v. Rockford Prof'l Baseball Club,* 244 Ill. App. 3d 643, 613 N.E.2d 321, 325-27, 184 Ill. Dec. 294 (1993); *Libertarian Party v. State*, 199 Wis. 2d 790, 546 N.W.2d 424, 435-36 (1996); *Kelly v. Marylanders for Sports Sanity, Inc.*, 310 Md. 437, 530

A.2d 245, 259-60 (1987).

In *Packard,* for example, the Illinois Court of Appeals held that sovereign immunity principles applied to a city park district as a security provider at a professional baseball field because this act was a governmental function. 613 N.E.2d at 325-27. The Illinois Court of Appeals based its holding on the fact that the park district had the power to lease, establish, and maintain athletic fields under Illinois State statutes and was obligated under a stadium lease to operate and maintain the field during baseball games. *Id.* at 327.

In *Libertarian Party*, the Wisconsin Supreme Court held that the construction of the Milwaukee Brewers' professional baseball stadium did not violate the internal improvements clause of the Wisconsin Constitution because the construction of the baseball stadium for public recreational purposes was similar to a municipality's construction of a natural public park and thus served a predominantly governmental function. *Libertarian Party*, 546 N.W.2d at 435-36. In upholding sports stadium legislation, a California State court has compared the creation of modern sports stadiums to the great public arenas in ancient Greece. *Los Angeles County v. Dodge*, 51 Cal. App. 492, 197 P. 403, 407 (1921).

Particularly instructive here is the Maryland Court of Appeals decision in *Kelly*, cited with approval by this court in *CLEAN*, 130 Wn.2d at 793 (citing *Kelly*, 530 A.2d at 257). In *Kelly*, the Maryland State Legislature created the Maryland Stadium Authority (Authority), designated as a public corporation and

instrumentality of the State. *Kelly*, 530 A.2d at 245-46. Much like the PFD here, the Authority was vested with broad power to regulate the use and operation of its facilities and to charge fees. *Id*. The Authority was authorized to borrow money, issue bonds in connection with the acquisition and construction of facilities, and acquire property as needed. *Id.*

Various bills were passed and signed into law through the Maryland State Legislature that defined the financial parameters in which the Authority could construct the sports stadiums. *Id.* at 246-49. Opponents of the Authority filed suit, claiming the legislation was not an appropriation "'for maintaining the State Government'" within the contemplation of the Maryland Constitution to exempt it from referendum. *Id.* at 249-50 (quoting Md. Const. art. XVI, § 2).

While recognizing that stadium construction served a public purpose, the Maryland Court of Appeals determined that the real issue was whether Maryland's involvement was an exempt appropriation "'for maintaining the State Government.'" *Id.* at 257-58 (quoting Md. Const. art. XVI, § 2). The Maryland Court of Appeals emphasized that the "for maintaining the State Government" clause was a higher standard than a mere public purpose:

> In determining whether a particular appropriation is for maintaining the State government within the meaning of the Referendum Amendment, our cases have variously described the appropriation as being for a "primary," "imperative," or "important" function of State government. . . . As otherwise stated in *Bickel*, the proper test is whether the governmental activity being funded comes "within the class of those for maintaining the government, without reference to the existing need or lack of it."

Id. at 259 (quoting *Bickel v. Nice*, 173 Md. 1, 11, 192 A. 777 (1937)).

Ultimately, the court determined that the stadium project met the higher standard. *Id.* at 259-60. Maryland State courts subsequently held that expansions of a convention center and a public ballot program were sovereign acts because both were legislatively authorized, were for the public interest, and gave little profit to the municipalities at issue. *Bell Atl.-Md., Inc. v. Md. Stadium Auth.*, 113 Md. App. 640, 688 A.2d 545, 551 (1997); *Burns v. Mayor & City Council*, 71 Md. App. 293, 525 A.2d 255, 262 (1987).

The Safeco Field project similarly reflects the sovereign function of providing for public recreation. The state legislature and the King County Council created the PFD, a municipal corporation. Laws of 1995, 3d Spec. Sess., ch. 1, §§ 201(4)(b) at 5, 301(1)-(5), at 8; King County Ordinance 12000, § 6, at 8 (1995). The PFD consistent with chapter 36.100 RCW was delegated broad state powers to "acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate a baseball stadium." Laws of 1995, 3d Spec. Sess., ch. 1, §§ 201(1), at 4, (4)(b) at 5; King County Ordinance 12000, § 4C at 5. This court previously upheld the constitutionality of the delegation of legislative powers to the PFD under the stadium act. *King County v. Taxpayers of King County,* 133 Wn.2d 584, 605-06, 949 P.2d 1260 (1997).[2]

[2] The PFD was also given the authority by the legislature and through it King County to use tax revenues for the construction of Safeco Field. Laws of 1995, 3d Spec. Sess., ch. 1, §§ 101(1), at 1, 102(2), at 2, 104, at 3. The Mariners have the future right of reimbursement from the excess revenues fund for the repairs of the intumescent coating

From its inception, the PFD's construction of Safeco Field involved the traditional sovereign function of providing public recreational benefits, like the public parks in *Russell*, *Metropolitan Park District of Tacoma*, *Nelson*, and *Kilbourn*, the swimming pools in *Mola*, and the playgrounds in *Stuver*. *See Russell*, 8 Wash. at 159; *Metro. Park Dist. of Tacoma*, 100 Wash. at 452; *Nelson*, 104 Wash. at 220; *Kilbourn*, 43 Wn.2d at 380, 385; *Mola*, 181 Wash. at 182; *Stuver*, 171 Wash. at 82. It is not necessary that the Washington State Constitution explicitly mandate the construction of professional baseball stadiums in order for this to be a sovereign function. The constitution does not explicitly require the construction of merry-go-rounds at city playgrounds, public libraries, or art museums, yet this court has determined that the construction and maintenance of such facilities for public recreational purposes involve the exercise of a sovereign governmental power. *Stuver*, 171 Wash. at 82; *Heavens v. King County Rural Library Dist.*, 66 Wn.2d 558, 566, 404 P.2d 453 (1965); *Int'l Longshoremen's & Warehouseman's Union*, 52 Wn.2d at 322-23.[3]

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defects as an "Unanticipated Capital Cost." CP at 201. The excess revenues fund is to be funded by the "first admissions" tax that was authorized by the legislature in the Stadium Act. Laws of 1995, 3d Spec. Sess., ch. 1, § 203(3)(a) at 8. While the dedication of tax dollars in this manner confirms the sovereign function at issue, our holding does not rest on the sovereign power of taxation under the *Gustaveson* line of cases, which concern the collection of taxes. *Gustaveson*, 83 Wash. at 309-10. We have never held that the mere spending of tax revenues constitutes an exercise of delegated sovereign power qualifying under the "for the benefit of the state" exemption to the statute of limitations. RCW 4.16.160.

[3] The *CLEAN* court stated, "it cannot be seriously contended that the development of a baseball stadium for a major league team is a 'fundamental purpose' of state government." *CLEAN*, 130 Wn.2d at 798. This statement was not directed at questioning whether the stadium project constituted a sovereign act. To the contrary, the

As in Maryland's *Kelly* case, Wisconsin's *Libertarian Party* case, and Illinois' *Packard* case, the PFD has been delegated broad powers by the state legislature to create and maintain a sports stadium for public recreation. Laws of 1995, 3d Spec. Sess., ch. 1, §§ 201(1), at 4, (4)(b) at 5; *see also Kelly*, 530 A.2d at 246; *Libertarian Party*, 546 N.W.2d at 428-29; *Packard*, 613 N.E.2d at 325. We have held that the PFD operates Safeco Field for the public benefit, and any excess profit from the venture is put into the excess revenues fund for future capital maintenance costs. *CLEAN*, 130 Wn.2d at 796-97; Laws of 1995, 3d Spec. Sess., ch. 1, § 203(3)(a) at 7-8. The construction of Safeco Field creates recreational benefits that reflect a sovereign, not proprietary purpose.

We reverse the trial court's order granting summary judgment in favor of HK and remand for further proceedings. Consistent with 90 years of jurisprudence by this court and other state courts, we hold that the construction of Safeco Field by the PFD as an agent of the State was a sovereign act creating public recreational benefits and traceable to delegated sovereign powers. Thus, the action by the PFD

CLEAN court recognized that most other state courts view similar governmental undertakings as serving a "public purpose." *Id.* at 793-94 (citing *Martin v. City of Philadelphia*, 420 Pa. 14, 215 A.2d 894, 896 (1966); *Kelly,* 530 A.2d at 257; *Rice v. Ashcroft,* 831 S.W.2d 206, 210 (Mo. Ct. App. 1991); *Libertarian Party,* 546 N.W. 2d at 434; *Lifteau v. Metro. Sports Facilities Comm'n*, 270 N.W.2d 749, 753 n.5 (Minn. 1978)). As explained above, while "public purpose" does not equate with "sovereign capacity," the fact that cases such as *Kelly* are cited in *CLEAN* lends support to the conclusion that the stadium project is an act in a "sovereign capacity." Indeed, the *CLEAN* court alluded to the interest of public recreation in noting that citizens have an interest in viewing major league baseball in Washington State. *CLEAN*, 130 Wn.2d at 805-06.

and the Mariners against HK regarding construction defects at Safeco Field qualifies under the "for the benefit of the state" exemption to the six year contract statute of limitations in RCW 4.16.160.

HK v. Long Painting & Herrick Steel

HK argues that if we reverse the summary judgment order involving the PFD and Mariners' claims, we should also reverse the summary judgment dismissal of its third party claims against Long Painting and Herrick Steel. *See* Br. of Respondents/Cross-Appellants at 23-24; Reply Br. of Cross-Appellants at 3-5. We agree that the record before us is insufficient to support summary judgment in favor of the subcontractors. Long Painting and Herrick Steel did not bring summary judgment motions against HK, and the basis for the trial court's order granting summary judgment is not entirely clear but appears to follow solely from the grant of summary judgment to HK.

While RAP 2.5(a) allows us to affirm a trial court order on any basis supported in the record, the record here does not allow us to consider whether HK's third party claims should be treated the same as the PFD and Mariners claims under RCW 4.16.160 or whether any ground in equity requires this result. *See* Br. of Amicus Curiae Associated General Contractors of Washington at 11-12. Accordingly, we reverse the order granting summary judgment to Long Painting and Herrick Steel and remand to the trial court so that the parties may have their arguments and authorities fully considered. We deny Long Painting's request for

attorney fees under RAP 18.9.

CONCLUSION

We reverse the trial court's summary judgment order in favor of HK and remand for further proceedings consistent with this opinion. We hold that the construction of Safeco Field by the PFD involves the exercise of sovereign powers traceable to delegated sovereign powers of the State, and claims based on its construction fall within the "for the benefit of the state" statute of limitations exemption in RCW 4.16.160. We also reverse the trial court's summary dismissal of HK's third party claims against Long Painting and Herrick Steel and remand for the trial court to consider further argument and authorities as to these claims. We deny Long Painting's request for attorney fees.

AUTHOR:
Justice Debra L. Stephens

WE CONCUR:
Chief Justice Gerry L. Alexander
Justice Susan Owens
Justice Charles W. Johnson
Justice Mary E. Fairhurst
Justice Barbara A. Madsen